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16
17 IN THE UNITED STATES DISTRICT COURT
18
19 FOR THE NORTHERN DISTRICT OF CALIFORNIA
20
21 SAN FRANCISCO DIVISION

22 UNITED STATES OF AMERICA,

23 Plaintiff,

24 v.

25 YEVGENIY ALEXANDROVICH NIKULIN,

26 Defendant.

27 **No. CR-16-00440 WHA**

28 **DEFENDANT'S MOTION IN LIMINE
NO. 3 PURSUANT TO FED. R. 403 TO
EXCLUDE THE GOVERNMENT
FROM MAKING REFERENCE TO MR.
NIKULIN'S FINANCES AND
LIFESTYLE**

29
30 **INTRODUCTION**

31
32 Defendant YEVGENIY ALEXANDROVICH NIKULIN ("Mr. Nikulin") is charged by
33 indictment with three counts of computer intrusion (Counts One, Four, and Seven), in violation of
34 18 U.S.C. § 1030(a)(2)(C); two counts of intentional transmission of information, code, or

1 command, causing damage to a protected computer (Counts Two and Eight), in violation of 18
 2 U.S.C. § 1030(a)(5)(A); two counts of aggravated identity theft (Counts Three and Nine), in
 3 violation of 18 U.S.C. § 1028A(a)(1); one count of trafficking in unauthorized access devices
 4 (Count Six), in violation of 18 U.S.C. § 1029(a)(2); and one count of conspiracy (Count Five), in
 5 violation of 18 U.S.C. § 371.

7 A pretrial conference is set in this case for February 26, 2020 with a jury trial set for March
 8 9, 2020.

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 In this case the evidence produced by the government includes information that Mr. Nikulin
 11 was arrested while traveling in the Czech Republic, there are photographs of him with exotic cars
 12 and eating in what appear to be high-end restaurants. In this case, the government is accusing Mr.
 13 Nikulin of computer related crimes for financial gain and evidence of his previous lifestyle prior to
 14 his arrest has a likelihood of prejudicing a trier of fact against Mr. Nikulin while offering no
 15 probative value.

17 Fed. R. Evid. 401 defines relevant evidence as evidence that has any tendency to make a
 18 fact that is of consequence in determining the action more or less probable than it would be without
 19 the evidence. Here evidence of his interest in travel or the cars Mr. Nikulin may have driven or the
 20 restaurants he frequented are not probative of any elements of the crimes for which he is charged
 21 and are irrelevant. Rule 402 provides that irrelevant evidence is not admissible. Rule 403 provides
 22 that the court may exclude relevant evidence “if its probative value is substantially outweighed by
 23 the danger of . . . unfair prejudice, confusion of the issues, misleading the jury, undue delay,
 24 wasting time, or needless presenting cumulative evidence.” District courts have wide discretion in
 25 determining the admissibility of evidence under the Federal Rules, particularly with respect to Rule
 26
 27

1 403, since it requires an “on-the-spot balancing of probative value and prejudice.” *Sprint/United*
 2 *Management Co. v. Mendelsohn*, 552 U.S. 379, 384 (2008).

3 The only way this evidence could have any probative value would be if the government first
 4 proves that: (1) Mr. Nikulin personally purchased the items that allegedly reflect Mr. Nikulin’s
 5 “lavish lifestyle”; and (2) the funds used to purchase those items in fact came from the alleged
 6 cybercrime conspiracy, rather than from some other source of income. Even if these necessary
 7 predicates could be established, evidence about Mr. Nikulin’s alleged purchases would create such
 8 a high risk of unfair prejudice, jury confusion, tangential detours, and mini trials, that it should still
 9 be precluded under Rule 403.

10
 11 Therefore, any evidence suggesting Mr. Nikulin had an opulent lifestyle is highly
 12 inflammatory; this evidence would cause jurors to speculate about issues unrelated to the charges in
 13 the indictment. But particularly in a case where the Government alleges financial wrongdoing, the
 14 jury could quickly be swayed by images of exotic cars, fancy looking vacations and high-end
 15 restaurants. In short, Mr. Nikulin runs a risk of being convicted for his lifestyle rather than the
 16 conduct charged in the Indictment.

17
 18 Courts routinely hold that evidence and argument concerning a party's resources, wealth,
 19 and related matters are wholly irrelevant, highly prejudicial, and thus a proper subject for
 20 a motion *in limine*. *See Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977) (“[T]he
 21 ability of defendant to pay the necessary damages may inject into the damage determination a
 22 foreign, diverting, and distracting issue which may effectuate a prejudicial result.”); *In re*
 23 *Homestore, Inc., C.D. California*, 2011 WL 291176, at *1 (“Evidence of a
 24 party's financial condition is generally not relevant and can be unduly prejudicial, as it can distract
 25 the jury from the real issues in the case.”).

1 See, e.g., *Papadopoulos v. Fred Meyer Stores, Inc.*, 2006 WL 3249195, at *2 (W.D. Wash. Nov. 8,
2 2006) (granting motion *in limine* to exclude “evidence or argument regarding defendant’s financial
3 condition.”)

CONCLUSION

Accordingly, pursuant to Fed. R. Evid. 401- 403, Mr. Nikulin respectfully requests that the Court exclude evidence of his personal finances or lifestyle as irrelevant and prejudicial.

DATED: January 29, 2020

/s/ Adam Gasner
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YEVGENIY ALEXANDROVICH NIKULIN

DATED: January 29, 2020

/s/ Valery Nechay _____
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